Supreme Court, U.S.
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In the

Supreme Court of the United States

October Term, 1996

THORN Americas, Inc. (formerly known as Rent-A-Center, Inc.), a Delaware corporation, and THORN EMI North America Holdings, Inc., a Delaware corporation,

Petitioners,

v.

Vickie Fogie, Joan Leonard and Angela Adams, on behalf of themselves and all others similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

A. Introduction.

Appellant/Petitioner Thorn Americas, Inc. operates a chain of stores and offers a variety of consumer goods for sale under its "rent to own" transactions. Appellant EMI North America Holdings, Inc. owns all of the stock of Thorn Americas, Inc. Appellants operate their stores under the business name "Rent-A-Center."

By its highly selective and self-serving recitation of the facts, Petitioners Thorn Americas, Inc., et al. (hereinafter RAC)[1] attempt to premise issues for this Court's review which factually do not exist. As will be explained, Minnesota's statutory treatment of rental purchase contracts (also known as rent-to-own contracts) is unique. The Minnesota statutes in issue -- Minnesota's usury statute - Minn. Stat. § 334.01, et. seq. at App. 80; Minnesota's Consumer Credit Sales Act (CCSA) - Minn. Stat. § 325G et. seq. at App. 84 and Minnesota's Rental Purchase Agreement Act (RPAA) - Minn. Stat. § 325F et. seq. at App. 63 -- were all enacted before RAC and the Plaintiff Class entered into the thousands of rental purchase agreements which are at issue here. The Minnesota Supreme Court's holding that these rental purchase agreements as credit sales were subject to and in violation of Minnesota's usury statute was reasonable and foreseeable. That RAC's assertions in its Petition have no merit is quickly evident by a review of the rent-to-own industry and RAC's recognition of and unsuccessful attempts to avoid exactly what

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[1] In keeping with the Eighth Circuit's opinion, Petitioners will be collectively referred to as "RAC" in this Response to Petitioners' Petition for Certiorari. References to Petitioners' Appendix will be "App." References to Respondent Plaintiff Class' Appendix will be "A." References to Respondents' Court of Appeals Appendix will be "C.A.R.A."

the Minnesota Supreme Court ruled in Miller v. Colortyme, Inc., 518 N.W.2d 544 (Minn. 1994) at App. 45 and in Fogie v. Rent-A-Center, Inc., 518 N.W.2d 544 (Minn. 1994) at App. 44.

For the Court's benefit, Respondents/Plaintiffs Vickie Fogie, Joan Leonard and Angela Adams, on behalf of themselves and all others similarly situated (hereinafter Plaintiff Class) will present the facts fully in order to convey a more accurate picture for the Court.

B. Historical Recognition That Rent-To-Own Transactions Are Subject To Usury Statute.

1. Credit Sales Under CCSA Are Subject to Usury Statute.

Under the terms of RAC's rental purchase agreements, a buyer acquires ownership of consumer goods while deferring payment over time. Miller, 518 N.W.2d at 547 at App. 53. While these rent-to-own transactions purport to be short-term leases, they operate, in substance, like ordinary installment sales. Id. Since 1981, terminable leases (which include RAC's rental purchase agreements) have been defined by Minnesota statute as credit sales. Minn. Stat. § 325G.15, subd. 5 at App. 85; Miller, 518 N.W.2d at 547 at App. 50-51. As a credit sale, these transactions were always subject to Minnesota's usury statute (8% interest rate if contracted for in writing). Miller, 518 N.W.2d at 548 at App. at 53-54. See Minn. Stat. § 334.01. at App. 80. Since 1877, the remedy for violation of § 334.01 of the usury statute has been forfeiture of any interest paid under § 334.02 and entitlement by the victim to have the contract declared void under § 334.03 so that the victim of usury is not liable for the principal or the interest. Minn. Stat. §§ 334.02 and 334.03 at App. 81 and 83. Barton v. Moore, __ N.W.2d __ (1997 WL 58699) (Minn. 1997).

RAC, as well as the rent-to-own industry in general, has long recognized that if terminable leases are credit sales under a state's law, its rental purchase agreements are subject to that state's usury law. RAC, for example, in its 1983 prospectus acknowledged as follows:

> Regulation
>
> Every state in which the Company does business has laws governing consumer credit sales. . . . Some courts, however, have held that a terminable rental agreement may be considered a credit sale, depending upon the facts and circumstances of the case . . .
>
> If these laws were found to be applicable to the Company's rental agreements, the rental payments made to the Company may not come within the applicable state interest rate and finance charge limitations. . . . The penalties for violating such statutes vary from state to state, but may include . . . forfeiture of the right to collect any payments of principal or interest.

Rent-A-Center, Inc., 1983 Prospectus (1983) at A. 12-13.

As early as 1981, the Association of Progressive Rental Organizations (APRO), the national trade association for the rent-to-own industry of which RAC is a member, acknowledged in its national publication that if terminable leases were found to be credit sales, state usury statutes could apply to rent-to-own transactions with disastrous results:

> One final point should be made regarding "price unconscionability." Could a consumer attorney argue successfully that a terminable lease is a disguised installment sale for usury purposes? If a court were to treat such a lease as a disguised installment sale, the excess of the total rental payments over the estimated cash purchase price would be considered as finance charge subject to any applicable installment sale legislation. This could be disastrous.

Association of Progressive Rental Organizations, Legal Information Packet (1981) at A. 16. (Emphasis in the original). APRO went on to advise its members:

> . . . [T]he option to terminate at the end of any weekly or monthly rental period should insulate the industry from attack based upon a usury theory. Nonetheless, counsel for leasing companies in various states should be aware of special state statutes which may broaden the definition of a "consumer sale" to include terminable leases and thus raise usury questions.

Id. at A. 17. (Emphasis added).

RAC's counsel also specifically informed RAC (or its affiliates) in 1984 that if these rent-to-own transactions are deemed to be consumer credit sales under Minnesota law, they were subject to and in violation to Minnesota's usury statute. Counsel for RAC in 1984 advised as follows:

> However, I also [was] asked whether there are precautions that can be taken to comply with laws that would apply if the [rent-to-own] agreement were to be recharacterized as a credit sale by a court's interpretation. . . . Because of the extremely low legal interest rate applicable to such agreement in Minnesota (8%) [referencing rate contained in Minn. Stat. § 334.01 of the usury statute], it probably would not be possible to convince a court that the agreement was lawful if it should ever be construed as a credit sale contract.

A. 30. Given this record, RAC's argument that no reasonable person reading Minnesota statutes could have foreseen that these rental purchase contracts violated Minnesota's usury statute is, to say the least, disingenuous.

2. Proposed Federal Legislation Preempting State Consumer Credit Laws Not Enacted.

Based on its recognition that its transactions may, indeed, be credit sales and subject to a state's usury laws, the rent-to-own industry first directed its efforts at enactment of federal legislation that would preempt its transactions from state consumer credit laws, such as those in Minnesota. RAC supported the adoption of such a federal law. See Rent-A-Center, Inc., Annual Report, Form 10-K for fiscal year ended 7/31/87 (1987) at A. 21.

Industry representatives testified before the United States Senate that federal regulation of terminable leases was necessary to prevent, among other things, the application of state usury statutes to rent-to-own contracts. J. Samuel Choate, APRO's counsel, tellingly testified:

> The essence of the problem is efforts by state legislatures or courts to characterize the short-term consumer lease as something it is not, by labeling it a purchase or a credit sale.
>
> The result for the industry is that, under state law, disclosure and other requirements (usury limits, for example) that have been designed to apply to credit sales would become applicable to short-term leases.

To Amend the Consumer Credit Protection Act with Respect to Consumer Leases and Rental-Purchase Agreements: Hearings on S.1152 Before the Subcomm. on Consumer Affairs of the Senate Comm. on Banking, Housing, and Urban Affairs, 98th Cong., 1st Sess. (July 19, 1983) (Testimony of J. Samuel Choate, Jr., counsel to APRO) at A. 25. (Emphasis added.)

Another APRO attorney's letter to Subcommittee Chair, Senator Paula Hawkins, warns of the same consequence should the state's consumer protection laws not be overridden by APRO's proposed federal legislation:

> Usury limits - . . . Lease transactions, if characterized as "credit sales", would become subject to such usury limits.

Letter of Sheldon Schreiberg to Sen. P. Hawkins (Aug. 12, 1983) at A. 27. A copy of this letter was received by Tom Devlin, director and principal stockholder in RAC. Id. at A. 29.

The industry's efforts to immunize its business from state usury laws through a federal enactment ultimately failed. The

rent-to-own industry then turned its efforts to the individual state legislatures seeking to repeal statutes akin to Minnesota's CCSA to avoid being subject to the usury statute.

3. Passage of Legislation Exempting Rental Purchase Agreements from CCSA and Usury Statute Failed in Minnesota.

The rent-to-own industry pursued in the Minnesota Legislature, as it did elsewhere, the enactment of a rent-to-own industry sponsored bill that would distinguish and exempt rental purchase agreements from consumer credit sales statutes and insulate these transactions from attack under the usury law. James Nehf, Effective Regulation of Rent-to-Own Contracts, 52 Ohio St. L.J. 751, 821 (1991).[2] The rent-to-own industry's goal was to repeal any application of the Consumer Credit Sales Act and therefore the usury statute to these rental purchase transactions. Id.

As initially introduced in the Minnesota Legislature, as elsewhere, the RPAA would have insulated the rent-to-own transactions from Minnesota's CCSA and Minnesota's usury statute. Miller, 518 N.W.2d at 550, App. at 59. RAC's reference to Minnesota legislative history with regard to the enactment of the RPAA is grossly misleading. RAC's Petition references a Minnesota Senate Commerce Committee Hearing on March 1, 1990. In actuality, the Commerce Committee Bill was later greatly modified with the Minnesota Senate expressly rejecting many key provisions of the bill which were the subject of the earlier Commerce Committee hearings. A

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[2] It should be noted that the author of that article, James Nehf, was, prior to being a law professor, a member of the law firm that represented RAC and APRO and wrote most of the industry's model bill. N.Y. Times, June 4, 1988, at p. 56. Nehf does not acknowledge his previous connection to the rent-to-own industry and the effect it had on his observations in his article.

key amendment was made taking out the industry's language which would have explicitly exempted rent-to-own transactions from the CCSA. Id. The following excerpts from the 1990 Minnesota Senate's debate demonstrate the Minnesota Legislature's unmistakable intent to continue to regulate rental purchase transactions under the CCSA and maintain their status as a credit sale under Minnesota law:

> Senator Ember D. Reichgott:
>
> . . . We had a great deal of discussion on this bill in Judiciary, and the issue there really was whether or not these transactions - these rent-to-own transactions should be covered under - as a credit sale. Should they be a credit sale and have the protections of the interest rate of consumer protection in our law, or are they something else that should be exempted out from the credit sales. . . . Unfortunately, what Senator Dahl's bill [sponsor of the industry's bill] is doing is deleting that language, and so, under Senator Dahl's bill, if you don't adopt my amendment, you would not have any way, shape or form to call this a credit sale any longer. And so you would have deregulation. You would have no consumer protection; you would have no interest cap; you would have nothing to protect these consumers. Now, I believe this is a sale. I believe it's as much a sale as any other kind of installment contract. . . . If it is a sale, then lets treat it as a sale. Let's call it a sale, and lets keep the law as it is. . . .

Senator Gary W. Laidig:

> Mr. Chairman. The reason that we need to adopt the Reichgott Amendment - the only reason we had a fifteen minute explanation of all the protections and the guarantees and the consumer protection, the only reason we had that explanation is 'cause the industry wants to write themselves out of the law. Look on page 14. In 1981, this Legislature wrote this language to bring this industry under control. . . . And the reason Senator Dahl gave us a fifteen minute explanation of all the protection that the industry wants is because they want out from the law that [was] written to include them.

Senator Ember D. Reichgott:

> Mr. President, one clarification. My amendment does not take away any of the consumer protections. It leaves in Sections 1 to 14 which are the consumer protections. The reason that Senator Dahl says this bill will be unworkable if my amendment is adopted is because the industry won't want to pass just consumer protection unless they are exempted out of the credit sale act.

Transcript of Hearings on S.F. No. 1499 Before the Minnesota Senate, Comm. of the Whole (March 21, 1990) at A. 1.[3]

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[3] At those 1990 hearings, Attorney J. Samuel Choate represented the Minnesota Rental Dealers Association, of which RAC is a member, and testified in support of the industry bill. Senator Dahl was the sponsor of the rent-to-own industry's bill.

As originally proposed, the RPAA would have explicitly excluded applicability of the CCSA to rental purchase agreements. Amendments were subsequently adopted in Minnesota to the RPAA that deleted any provisions that would have excluded the applicability of the CCSA to these rental purchase agreements. As amended and enacted, all consumer protection statutes, including the CCSA and the usury statute, continued to apply expressly to rental purchase agreements. Miller, 518 N.W.2d at 550 at App. 59; Minn. Stat. § 325F.97, subd. 2 at App. 78. The Minnesota legislature explicitly rejected any notion that the RPAA repealed the remedies of Minnesota's consumer protection statutes or that its terms were to be the sole regulator of rent-to-own transactions. Id.

C. Procedural History Of This Case.

RAC and the Plaintiff Class entered into thousands of rental purchase contracts in Minnesota between August 1, 1990 and the present date. C.A.R.A. at 19. As previously stated, all of these contracts were entered into after the enactment of Minnesota's CCSA, the RPAA and the usury statute. These contracts, it was argued by Plaintiff Class, constituted "consumer credit sales" within the meaning of CCSA and were subject to Minnesota's usury statute, which RAC had violated. On March 2, 1993, Federal District Court Judge Diana E. Murphy issued an Order granting Plaintiff Class' motion to certify the class. She also ruled that RAC's rent-to-own contracts are consumer credit sales for all purposes within the meaning of Minn. Stat. §§ 325G.15 and 325G.16. C.A.R.A. at 1.

Plaintiff Class subsequently brought a motion for a permanent injunction and for partial summary judgment asserting that since RAC's contracts are deemed consumer credit sales, it followed that RAC had violated Minnesota's

usury statute, Minn. Stat. § 334.01. While those motions were under advisement, the Minnesota Court of Appeals in Miller v. Colortyme, Inc., 504 N.W.2d 258 (Minn. Ct. App. 1993), held that rent-to-own contracts are a "sale of goods" under the CCSA, but that they are not consumer credit sales within the meaning of the CCSA.

Plaintiff Class requested that this case be stayed pending review by the Minnesota Supreme Court of the Miller decision and requested that the district court certify the following questions to the Minnesota Supreme Court: (1) are rent-to-own contracts consumer credit sales under Minn. Stat. § 325G.15, et. seq. and (2) does the usury statute, Minn. Stat. § 334.01, et. seq., apply to rent-to-own contracts? RAC opposed certification, arguing that Miller provided a clear statement of Minnesota law that applied to this case.

The federal district court, in the exercise of its discretion, certified the above stated issues to the Minnesota Supreme Court. C.A.R.A. at 295. In its brief to the Minnesota Supreme Court, while complaining that no factual statement accompanied the certified question, RAC also acknowledged that "the terms of [RAC]'s rental purchase agreement are, however, undisputed and are sufficient for the Court's determination of the certified questions." (RAC's Brief to the Minnesota Supreme Court, CV-93-1801, dated 12/1/93 at p. 10.)

The Minnesota Supreme Court in Miller v. Colortyme, Inc.,[4] 518 N.W.2d 544 (Minn. 1994) at App. 45, reversed the Court of Appeals in its entirety. The Supreme Court held that based on its review of the CCSA, rent-to-own contracts are protected "consumer credit sales" within the meaning of Minn. Stat. § 325G.15, subd. 2. Id. at 548, App. at 52.

The Minnesota Supreme Court also held that rent-to-own contracts are usurious as a matter of law. Id. at 550, App. at

[4] The Defendant in Miller is referred to as DEF.

58. By defining rent-to-own transactions in the CCSA as "consumer credit sales," the Minnesota Legislature has established that consumers who enter into rent-to-own transactions are to benefit from the same protections as consumers who purchase goods through ordinary installment sales. The Supreme Court recognized that the economic reality of these transactions is that of credit sale. As a credit sale, the finance charge levied in the transaction was subject to the limitation of the usury statute. Id. at 548, App. at 52-53.

The Minnesota Supreme Court specifically addressed DEF's argument that the RPAA had repealed the CCSA. Miller, 518 N.W.2d at 551, App. at 62. Based on the statutory language and its legislative history, the Minnesota Supreme Court concluded that there was no repeal of the CCSA; rather, the remedies in the two statutes, as stated in the statutes themselves, are cumulative. Id.

This case was argued on certified questions to the Minnesota Supreme Court concurrently with the argument in Miller.[5] Citing its analysis in Miller, the Minnesota Supreme Court in this case held that RAC's contracts with Plaintiff Class were "consumer credit sales" and were subject to the usury statute. Fogie, 518 N.W.2d at 544, App. at 45.

Undaunted, RAC continued to conduct its business in violation of Minnesota law. Plaintiff Class, upon remand to

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[5] RAC asserts in its Petition on page 6 that Minnesota's usury statute does not apply to "such instruments which are taken or received in accordance with and in reliance upon the provisions of any statute," citing Minn. Stat. § 334.03. What RAC fails to inform the Court is that this assertion was untimely raised for the first time in its appeal to the Eighth Circuit from the grant of injunctive relief. (Appellees' Brief to Eighth Circuit p. 430, n 17.) In addition to such argument being untimely raised, it is fatally flawed. These rental purchase agreements could never extract an interest rate greater than set forth in Minn. Stat. § 334.01. Further, the term "instrument" means a negotiable instrument. Therefore, as a matter of law this exception has no application to RAC.

the federal district court, brought a motion for partial summary judgment against RAC seeking the following:

- A finding that the contracts are usurious as a matter of law.

- A finding that in connection with the Plaintiff Class RICO claim, the interest rate charged the Plaintiff Class was more than twice the rate permitted by Minnesota law.

- A finding of the appropriate measure for damages for usury under Minnesota law and a declaration that Plaintiff Class members holding executory rent-to-own contracts with RAC had no obligation to make any further payment.

- A permanent injunction enjoining RAC from engaging in credit sales transactions subject to Minnesota law and an interest rate in excess of the maximum allowed under Minnesota law.

In response, RAC argued that there were genuine issues of material fact regarding the presence of the required elements of usury, that Plaintiff Class' rent-to-own contracts are within the time price exception of the usury statute, that Minnesota's CCSA and the usury statute are unconstitutional as interpreted and applied by the Minnesota Supreme Court, that Plaintiff Class did not prove the existence of any unlawful debt in violation of RICO and that Plaintiff Class is not entitled to the remedies it seeks.

By Order dated September 28, 1995, the federal district court held, in accord with the Minnesota Supreme Court's answers to the certified questions, that the rental purchase contracts issued by RAC to the Plaintiff Class are consumer

credit sales contracts for all purposes and are subject to the Minnesota general usury statute. The contracts also were found to be usurious as a matter of law. App. at 22.

The district court rejected RAC's assertions that the Minnesota Supreme Court's interpretation of the CCSA, the RPAA and the usury statute renders those statutes unconstitutionally vague and that application of this interpretation was unconstitutional as a violation of due process. Id. at App. 30-33. The district court concluded that under Minnesota law the available remedies to Plaintiff Class are voiding the contract and recovering all interest and principal paid or retaining the property and refunding the interest paid. From the date of this Order, the federal district court enjoined RAC from entering into credit sales transactions within the State of Minnesota which bear interest at annual rates in excess of the maximum rate permitted under Minnesota law. Id. at App. 42.

RAC appealed this interlocutory order granting injunctive relief to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1292(a)(1). In seeking reversal of this grant of injunctive relief, RAC argued that the Minnesota Supreme Court's interpretation of Minnesota statutes had violated its constitutional rights. The Eighth Circuit disagreed. Fogie v. THORN Americas, Inc., 95 F.3d 645, 650 (8th Cir. 1996), reh'g and suggestion for reh'g en banc denied (1996) at App. 9. The Eighth Circuit concluded that these statutes passed the vagueness test enunciated by this Court in Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972) and Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498-99 (1982), reh'g denied, 456 U.S. 950 (1982). Fogie, 95 F.3d at 650, App. at 10-11. Based on its review of the Minnesota statutes, the Eighth Circuit concluded:

> These statutory provisions give sufficient notice to those engaged in the rent-to-own industry that their rental purchase contracts fall within the CCSA and are subject to usury laws. They also provide standards by which the courts can apply the statutes without engaging in subjective or arbitrary policy making decisions. Accordingly, the statutes pass the vagueness test enunciated in Grayned v. City of Rockford and Village of Hoffman Estates.

Id. at 650-51, App. at 11.

Citing Bouie v. City of Columbia, 378 U.S. 347 (1964), the Eighth Circuit also concluded that the Minnesota Supreme Court's judicial construction of these statutes was "not 'unexpected or indefensible by reference to' the statutory framework already in place." Fogie, 95 F.3d at 651, App. at 13. There was no due process violation. The Eighth Circuit found "the judicial construction of those statutes is reasonable and foreseeable," gave full meaning to the statutory language, operated in the manner clearly intended by the Minnesota Legislature, and furthered the consumer protective objectives of the statutes. Id. The Eighth Circuit specifically noted that Miller did not overrule any prior contrary ruling of the Minnesota Supreme Court "upon which RAC might justifiably have relied." Id. The Eighth Circuit ultimately concluded:

> In short, Miller did not change existing law -- it simply stated a reasonable and correct interpretation of the law which differs from the erroneous view RAC had chosen to follow.

Id.

RAC's petition for rehearing and suggestion for rehearing en banc were denied. App. at 43.

REASONS FOR DENYING THE WRIT

The premise of RAC's petition is that no person could reasonably have foreseen that RAC's rental purchase agreements were subject to and in violation of Minnesota's usury statutes. The facts of record clearly show that not only was the Minnesota Supreme Court's interpretation of Minnesota statutory law foreseeable, it was feared. Based on its review of the state statutes, the Eighth Circuit concluded that the Minnesota Supreme Court "stated a reasonable and correct interpretation of [Minnesota] law which differs from the erroneous view RAC had chosen to follow." Fogie, 95 F.3d at 651, App. at 13.

This case presents no federal issues meriting this Court's review. The Eighth Circuit fully considered and correctly analyzed and decided the constitutional issues presented in accord with the decisions of this Court. The Eighth Circuit's decision is not in conflict with decisions of any state court, other circuit courts of appeal or this Court. Its decision presents no radical departure in the law. Petitioners are merely dissatisfied with the decisions of the Minnesota Supreme Court and the Eighth Circuit Court of Appeals.

I. THE EIGHTH CIRCUIT ASSUMED THAT THIS COURT'S RULING IN BOUIE APPLIED TO THIS CIVIL CASE BUT CONCLUDED THAT THE MINNESOTA SUPREME COURT'S CONSTRUCTION OF MINNESOTA LAW WAS NOT "UNEXPECTED OR INDEFENSIBLE."

After this Court's decisions in Marks v. United States, 430 U.S. 188 (1977) and Bouie v. City of Columbia, 378 U.S. 347 (1964), the Due Process Clause of the Fourteenth Amendment now places judges under the same basic constraint as the Ex Post Facto Clause does for legislatures. If a judicial construction of a criminal statute is "unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue" it may not be given retroactive effect. Bouie, 378 U.S. at 354.

This case does not involve criminal statutes, but civil consumer protection statutes. It has always been Plaintiff Class' position that Marks and Bouie have no application to this case for the same reason that the Ex Post Facto Clause, which only applies to criminal statutes, does not apply to civil statutes. Collins v. Youngblood, 497 U.S. 37, 41 (1990). For that reason alone, review should be denied.

In seeking certiorari, RAC glosses over the fact that over Plaintiff Class' objection, the Eighth Circuit did apply the holding of Bouie v. City of Columbia, 378 U.S. 347 (1964) to this civil consumer protection case. The Eighth Circuit's decision rests not on a conclusion that this Court's holding in Bouie is not applicable to a civil case but on its analysis that the Minnesota Supreme Court's judicial construction and interpretation in Miller was not "unexpected or indefensible" utilizing the Bouie analysis. The Eighth Circuit specifically stated:

> The judicial construction in Miller is not "unexpected or indefensible by reference to" the statutory framework already in place. On the contrary, the judicial construction of those statutes is reasonable and foreseeable, gives full meaning to the statutory language, operates in the manner clearly intended by the legislature, and furthers the consumer protection objectives of the statutes.

Fogie, 95 F. 3d at 651, App. at 13.

The issue, as framed by RAC, simply does not exist for this Court's review given the Eighth Circuit's apparent assumption that Bouie applies to a civil case. This case instead rests on its unique facts. Petitioners' argument is really nothing more than dissatisfaction with the Eighth Circuit's decision which is based on its reviw of Minnesota's unique statutory law. There is no federal question meriting review.

In reality what RAC really wishes this Court to review is the Eighth Circuit's determination that the Minnesota Supreme Court's interpretation of Minnesota law in Miller was reasonable and foreseeable. In stark contrast to the petitioners in Bouie, RAC certainly was not lulled "into a false sense of security, giving [it] no reason even to suspect" that its rent-to-own contracts were usurious. Bouie, 378 U.S. at 352. RAC's basic contention that no reasonable person would have known that its rental purchase agreements were subject to Minnesota's usury laws is absolute nonsense. To the contrary, RAC knowingly took the risk that the Minnesota Supreme Court would construe the statutes as it did. It should be noted that even after the Minnesota Supreme Court's pronouncements, RAC refused to change its way of doing

business and continued to operate in clear violation of Minnesota law.[6]

As the Eighth Circuit concluded, a simple reading of the statutes reveals that it is RAC's position that is indefensible and unjustified. The Eighth Circuit's decision that the Minnesota Supreme Court's rulings in Miller were clearly foreseen and defensible by reference to the statutory framework in place is in complete accord with Minnesota law and the record in this case.

The usury statute, the CCSA and the RPAA were enacted before RAC entered into its contractual agreements with the Plaintiff Class. Since 1981, terminable leases (such as RAC's rent-to-own transactions) have been defined by Minnesota CCSA as a credit sale. As such, they are subject to Minnesota's usury statute. Clearly, RAC could expect and foresee (and in fact its counsel did so warn) that given Minnesota CCSA's broad definition of a "consumer sale" to include terminable leases, its "sales" were usurious. In enacting the RPAA, the Minnesota Legislature considered and specifically rejected a proposal to exempt rent-to-own transactions from the CCSA and therefore the usury statute. The Minnesota Legislature long concluded that such transactions were, in substance, credit sales and must be treated as such. Miller was not only a foreseeable interpretation of this legislation, it was, in fact, foreseen. The Minnesota Supreme Court's interpretation of the statutes in issue was in complete accord with their plain language, had every support in the legislative history and was in accord with Minnesota law.

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[6] The Minnesota Supreme Court issued its decision in June 1994. Until at least September 1996, RAC continued to operate its business using the same form rental purchase agreement. RAC continues to do business in Minnesota to this day.

As the Eighth Circuit also noted, Miller did not overrule any prior contrary ruling of the Minnesota Supreme Court on which RAC might justifiably have relied. Fogie, 95 F.3d at 651, App. at 13. Bouie only applies to unpredictable shifts in the law, not to the resolution of any uncertainty that marks an evolving legal system. See United States v. Donelly's Estate, 397 U.S. 286, 295 (1970) (generally, decisions construing statutes given full retroactive effect, except in a rare case where a court overrules its own construction of a statute); United States v. Burnom, 27 F.3d 283, 284 (7th Cir. 1994). In contrast to the situation in Bouie, Miller is not a judicial repudiation of any prior controlling, narrow construction of a statute.

RAC continues to misconstrue Miller by claiming that in Miller the Minnesota Supreme Court judicially eliminated essential substantive elements of the Minnesota usury statute.[7] Contrary to RAC's running protestation against the Minnesota Supreme Court's decisions, the Minnesota Supreme Court did not eliminate any common law requirements of usury but concluded they were satisfied as a matter of law. Miller, 518 N.W.2d at 549-50, App. at 55-57. Miller is entirely consistent with its past decisions, as the Minnesota Supreme Court itself noted in Miller:

> There is no shift or device on the part of the lender to evade the [usury] law under or behind which the law will not look to ascertain the real nature and object of the transaction. Adjustment Service Bureau, Inc. v. Buelow, 196 Minn. 563, 567, 265 N.W. 659, 661 (1936).

Id. at 549, App. at 56-57.

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[7] Colortyme [DEF] raised the same contentions, unsuccessfully, in its Petition for Clarification to the Minnesota Supreme Court. C.A.R.A. at 198. The Minnesota Supreme Court specifically rejected Colortyme's application for prospective application of its decision. C.A.R.A. at 245.

Due process concerns certainly are not implicated where, as here, the statutory construction is clearly in accord with the terms of the statutes and did not upset settled case law.

II. THE EIGHTH CIRCUIT'S REJECTION OF RAC'S VOID FOR VAGUENESS ARGUMENT IS IN FULL ACCORD WITH DECISIONS OF THIS COURT.

In making its "void for vagueness" argument, RAC ignores that a state's supreme court's interpretation of a state statute does not constitute an impairment of a constitutional right unless "such constitutional impairment would have resulted if the meaning had been written into the statute by the legislature itself." Great Northern Ry. Co. v. Sunburst Oil & Refining Co., 287 U.S. 358, 361 (1932); Wainright v. Stone, 414 U.S. 21, 22-23 (1973) (for the purpose of determining whether a state statute is too vague and indefinite to constitute valid legislation court must take the statute as though it read precisely as the highest court of the state has interpreted it). RAC never argued to the district court that the Minnesota Legislature could not constitutionally mandate what the Miller and Fogie decisions hold. Therefore, as a matter of law, the state court's interpretation of these statutes cannot somehow render the statutes unconstitutionally vague.

As with its due process contention, RAC contends that the Minnesota Supreme Court's interpretation of Minnesota law is void for vagueness because it had no notice whatsoever that its rental purchase agreements were governed by Minnesota's usury laws. The Eighth Circuit, in accord with the standards enunciated by this Court in Grayned and Village of Hoffman Estates, rejected RAC's argument. Fogie, 95 F.3d at 650, App. at 10. RAC's argument is nothing more than a running protestation against the Minnesota Supreme Court's decision and does not present an issue of federal law meriting review.

This Court in Village of Hoffman recognized that economic regulation legislation is subject to a less strict vagueness test because businesses can be expected to consult relevant legislation in advance of action. 455 US. at 498. The Eighth Circuit's decision is in accord with that decision. All statutes in issue are economic regulations and regulate the conduct of business enterprises. The statutes do not threaten to inhibit the exercise of constitutionally protected rights. Fogie, 95 F.3d at 650, App. at 10.

In seeking review, RAC conveniently ignores that there was no damage issue before the Eighth Circuit for resolution. RAC's appeal is from an interlocutory order granting injunctive relief. In any event, Minnesota's usury statute certainly does not impose an uncertain, discretionary civil "penalty." Rather it explicitly specifies the civil "remedies" available to a victim of usury -- i.e. forfeiture of any interest paid on the contract and entitlement to have the contract declared void. In contrast to the situation involving a jury's discretionary award of punitive damages addressed by this Court in BMW of North America, Inc. v. Gore, __ U.S. __, 116 S.Ct. 1589 (1996), since 1877 Minnesota's usury statute has clearly and precisely stated the specific civil remedies to be granted a victim of usury. Barton v. Moore, __ N.W.2d __ (1997 WL 58699) (Minn. 1997).

CONCLUSION

Respondents Plaintiff Class respectfully request that the Petition for Writ of Certiorari be denied.

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Dated: March 5, 1997

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MINNESOTA SENATE, COMMITTEE OF THE WHOLE
TRANSCRIPT OF SENATE COMMITTEE HEARING
MARCH 21, 1990

Chair: The next item on the agenda will be Senate File - it's number 62 on the agenda, Mr. - Senate File No. 1499. Senator Dahl.

• • •

Chair: Senator Reichgott on Amendment A-17.

Reichgott: Thank you, Mr. Chairman and Members. We had a great deal of discussion on this bill in Judiciary, and the issue there really was whether or not these transactions - these rent-to-own transactions should be covered under - as a credit sale. Should they be a credit sale and have the protections of the interest rate consumer protection in our law, or are they something else that should be exempted out from the credit sales. My amendment would delete Section 15 of the bill which is the language that, in my opinion agnate in the opinion of many others, is what is at issue here. Section 15 is the language that is and now that - and the issue whether or not this would be a credit sale. This is the language that would make it a credit sale and therefore mean that all of those protections, consumer protections, would attach. Unfortunately, what Senator Dahl's bill is doing is deleting that language, and so, under Senator Dahl's bill, if you don't adopt my amendment, you would not have any way, shape or form to call this a credit sale any longer. And so you would have deregulation. You would have no consumer

protection; you would have no interest cap; you would have nothing to protect these consumers. Now, I believe this is a sale. I believe it's as much a sale as any other kind of installment contract. I mean, you don't go into these rent-to-own places and rent the kinds of things that they have without having some sort of intent to own. There are places that rent out, if you can believe this, wedding rings - bridal sets. Now, I don't know about you, but I sure hope that no one in this - this room has gone in and wanted to rent a wedding ring set. I would think most of you would intend to buy a wedding ring set. Now, that means, I hope, that this is a sale. If it is a sale, then let's treat it as a sale. Let's call it a sale, and let's keep the law as it is. Under Senator Dahl's bill we're taking that out, and we're saying no, this isn't a sale. Now, the reason that I've got this amendment, really, is two-fold. One, I believe it's a sale, but secondly, more importantly, this issue - this very issue is currently being litigated in Federal District Court. Judge Magnuson heard the arguments on this bill - on this litigation - on this statute, this very statute, last Friday. Now I don't think it's good public policy for the Legislature to be stepping in now, in the middle of a court case, on the very issue that's before us, and making the policy decision before the Court does. And that is exactly what Senator Dahl's bill would do. And let's just carry that through a little bit. Let's just think, well, we've got a case there, and let's say the Court says, "Well, folks, Legal Aid, you're right. This is a credit sale." Let's say the Court says that. We have basically subverted the Court. We've said, "Well, you can go ahead and

say that Court, that it's a credit sale, but we've removed it right out of the statute so it doesn't make one bit of difference any more for people who want to rent in the future. They won't have any remedy." In other words, what we've said here - even if the court finds it's a credit sale, we've just said, "No, it's not." Well, let the court make the decision. We shouldn't make that decision. Let them make the decision. And then, if they say it is a credit sale, fine, everything's fine. If they say it's not a credit sale, we can come back next year and fix that. But, meanwhile, there's no reason to delete this language from the statute. Don't take away the decision from the court. Let's not subvert the court. That's not our job. let them make their decision and we react to it.

Chair: Any further discussion?

Dahl: Mr. Chairman.

Chair: Senator Dahl.

Dahl: Mr. Chairman. First of all, in relation to the assertion by Senator Reichgott that this subverts the court case, the court case relates to consumer transactions that took place from 1981 to the present. It would have no impact whatsoever on any of those consumer transactions, except that it would provide some substantial consumer protection in the form of reinstatement rights and notice and those sorts of things which currently are not the practice or provided in law. So it would provide some consumer protections, but in terms of damages, they wouldn't have any impact.

Those are matters that have already taken place and this would only have impact in the future. The other thing I would - I just have to comment on is Senator Reichgott said that there's no consumer protection in this bill. Well, in fact, in Commerce Committee, the Attorney General's office stood before the Committee and said that they thought this was good, solid consumer protection. The only issue they had with the bill was the price issue. And that same Committee, and also in Judiciary Committee, Senator Spear asked Legal Aid how they felt about the bill. And I think their comment was that they felt it was a good bill. They were concerned about the price issue, but by and large, they felt that there was solid consumer protection in the bill. And I do invite the Members to look through the bill again. There's very solid consumer protection that's included in this bill. In terms of the issue of sale versus a lease, I became convinced after very substantial discussions that these, in fact, were leases and not sales. For example, if you lease this property from week to week or form month to month, at the end of the lease term - let's say at the end of a monthly lease term, if you decide you don't want the property any more, you can give the property back and you have no further obligation - none whatsoever. Now that's not the case with a consumer credit sale. If you buy and take property, let's say, from Best Buy company or from Sears or Wards or from Dayton's and you make six month's worth of payments, and then you don't want the property anymore. If you give the property back, that may be all well and good, but you're still going to have additional responsibilities

under that purchase to pay for the difference between what they could sell the property for and the amount that you contracted for when you undertook that debt. There is no debt in these transactions. If you go and purchase a piece of property from Dayton's and then they want to sell that piece of paper, that debt instrument, they can go to a bank and that bank will buy that because there's an ongoing obligation to make payments. That's not the case with these transactions If you sign a lease and then you decide that you don't want the property any more, there's nothing there that at a bank will buy. There's no debt. Hence, I would argue, and it certainly convinced me, there's really no sale. It's a lease transaction. So, Mr. Chairman, Members, there is good solid consumer protection in the bill. When it became clear to me that Legal Aid and the industry would never agree on the sale versus a lease, I said, "Look, let's look at every single consumer protection that applies to a consumer credit sale, and then let's make it apply here." And, in fact, we did that, and not only did we do that, but this went beyond that. There are protections here that aren't available for any consumer credit in the nation, or consumer credit sale in the nation, including the Fair Debt Collection Practices Act, which has not been passed by any jurisdiction in the nation. So I think we've done our job. I don't believe that this amendment - not only does it not add anything, but it would probably make the bill, in my opinion, unworkable. And I would have to debate as to whether I would progress the bill if the amendment went on.

Chair: Any further discussion on Senator Reichgott's Amendment A-17? Senator Kroening.

Kroening: Mr. Chairman, Senator Dahl. This is the right-to-own stuff. Right-to-own, it isn't right-to-lease. How do you say it's a lease when they want to own it? It's a sale. In fact, if you look at this clever sheet here, they've got "rent" on there. The next one is "rent-to-own," and then they say "rent-by-phone," and then they say "own it quicker." This isn't' a lease operation. It didn't say here "rent and return." Tell me where it says that. It doesn't say it, so whatever your argument is, when someone goes to this center, they're renting-to-own. Thank you.

Chair: Any further discussions? Senator Laidig.

Laidig: Mr. Chairman. The reason that we need to adopt the Reichgott Amendment - the only reason we had a fifteen minute explanation of all the protections and the guarantees and the consumer protection, the only reason we had that explanation is 'cause the industry wants to write themselves out of the law. Look on page 14. In 1981, this Legislature wrote this language to bring this industry under control. You know how they got out of it? If you're looking at the bill, on page 14, look on lines 21 and 22. Three conditions had to be met. All three had to be met. One of those conditions was that, if for no other or a nominal consideration upon full compliance. Do you know what the industry did? They went from an 18 month program to a 16 month program with a 2 month balloon, and they're arguing that's not a

nominal consideration. In 1981, we closed the loophole. We wrote these conditions. And the industry response is to go out - to go from an 18 month to a 16 month, a 2 month balloon, and now they're in court, in Federal Court, saying that's not a nominal consideration. Therefore we don't fall under the law that was written to apply to us. And the reason Senator Dahl gave us a fifteen minute explanation of all the protection that the industry wants is because they want out from the law that [was] written to include them. So, let's adopt the Reichgott Amendment. And, Senator Dahl, most people, as I understand it, rent-to-own. For vacuum cleaners, I think it's like 90%. For furniture, I don't know how high it is, but most people go in to rent-to-own. That's a consumer sale, and if nothing else, take a look at the handout on the Rent-A-Rock. Why are so many aggressive rental dealers embracing jewelry rent-to-own? Profits. Greed, with a capital "G." Adopt the Reichgott Amendment. Bring this industry under the control that [it] was meant to come under in 1981.

Chair: Any further discussion? Senator Reichgott.

Reichgott: Mr. President, one clarification. My amendment does not take away any of the consumer protections. It leaves in Sections 1 to 14 which are the consumer protections. The reason that Senator Dahl says this bill will be unworkable if my amendment is adopted is because the industry won't want to pass just consumer protection unless they're exempted out of the credit sale act. That's why it's unworkable. Now, with my

amendment, you'll have all the consumer protections there and we'll let the courts decide the issue of the credit sale. And, as one last note, Mr. Chairman, I thank Senator Ramstad for sending me a note that apparently they have talked with the Rent-A-Rock people and I just wanted you all to know that they have weekly rates on wedding rings, so anyone who would like to go on in and get your weekly rate, go ahead.

Ramstad: Mr. Chairman.

Chair: Any further discussion? Senator Ramstad.

Ramstad: Mr. Chairman, just to corroborate what Senator Reichgott said, we just had Rent-A-Rock live, on the air - on the telephone here, and they have discontinued their daily rentals for diamond wedding rings, but they do have the week-to-week or month-to-month.

Chair: Any further discussion?

Dahl: Mr. Chairman.

Chair: Senator. Any further discussion necessary? Senator Dahl.

Dahl: Mr. Chairman. I would just comment that, you know, sometimes these issues are more complicated than they seem. The state of Pennsylvania really made an effort to define these transactions, these rent-to-own transactions, as a credit sale so what the rent-to-own dealers did in Pennsylvania is they just eliminated the rent-to-

own. In Pennsylvania now, you rent-to-rent. You rent forever, and I don't know that that's necessarily a service to the people that they were trying to help. So, you know, I think the bill without the amendment provides very substantial consumer protection and has very, I think, appropriate provisions for the Commissioner to set the total cash price by rule, and I would just hope that you would leave the bill in good shape.

Chair: We have before us, then, Senator Reichgott's Amendment A-17 to Senate File 1499. All those who feel this motion should prevail say "aye."

Committee: Aye

Chair: Opposed? The Chair is in doubt.

Committee: (Laughter)

Chair: The Chair says that the motion passes. We have before us, then, Senate File 1499 as amended. Any further discussions? Hearing on all those who feel that Senate File 1499 should prevail as amended, say "aye."

Committee: Aye.

Chair: Opposed the same. Motion is carried.

1,425,000 Shares

Rent-A-Center, Inc.

Common Stock
(par value $1 per share)

Of the 1,425,000 shares of Common Stock offered hereby, 625,000 shares are being sold by the Company and 800,000 shares are being sold by the Selling Stockholders named under "Principal and Selling Stockholders." The Company will not receive any of the proceeds from the sale of the shares by the Selling Stockholders.

It is estimated that the initial offering price will be between $15.00 and $17.00 per share. Prior to this offering, there has been no established trading market for the Common Stock. See "Underwriting" for the factors to be considered in determining the initial public offering price.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to Public	Underwriting Discount	Proceeds to Company (1)	Proceeds to Selling Stockholders (1)
Per Share	$	$	$	$
Total	$	$	$	$

(1) Before deducting estimated expenses of $ payable by the Company and $ payable by the Selling Stockholders.

The shares of Common Stock are offered by the several Underwriters named herein, subject to receipt and acceptance by them and their right to reject any order in whole or in part. It is expected that delivery of the shares will be made on or about , 1983.

Kidder, Peabody & Co.
Incorporated

The date of this Prospectus is , 1983

Regulation

Every state in which the Company does business has laws governing consumer credit sales. These laws typically require disclosure to customers of interest rates and finance charges and impose limitations on the rate of interest that may be charged. A rental agreement or lease generally is considered a credit sale only if the renter or lessee contracts to pay rentals in an amount equal to or in excess of the purchase price of the rented property and has an option to purchase the property at the end of the rental term for nominal or no additional consideration. The Company does not believe credit sales laws apply to its business because its rental agreements are terminable at any time by its customers without further obligation, and because its purchase option price should be deemed more than nominal, although the amount that may be considered "nominal" is not clearly defined in such laws. Some courts, however, have held that a terminable rental agreement may be considered a credit sale, depending upon the facts and circumstances of the case, including, in particular, facts showing that the parties intended the agreement to be a credit sale notwithstanding written terms of the rental agreement to the contrary. In addition, some courts have applied the provisions of the Uniform Commercial Code to rental agreements. Such provisions include certain default procedures and a prohibition against unconscionable contracts.

If these laws were found to be applicable to the Company's rental agreements, the rental payments made to the Company may not come within the applicable state interest rate and finance charge limitations. Calculation of the Company's compliance with such limitations would require that various assumptions be made with respect to, among other things, the portion of rental payments that should be considered principal and the term of the agreement. The

penalties for violating such statutes vary from state to state, but may include a forfeiture of all amounts found to be interest or finance charges and, in some instances, forfeiture of the right to collect any payments of principal or interest. In addition, separate penalties may be imposed under many consumer credit sales laws for failing to give required disclosure of credit terms, even if the rates charged are lawful.

Association of
Progressive Rental Organizations

LEGAL INFORMATION PACKET

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V

Usury

One final point should be made regarding "price unconscionability." Could a consumer attorney argue successfully that a terminable lease is a disguised installment sale for usury purposes? If a court were to treat such a lease as a disguised installment sale, the excess of the total rental payments over the estimated cash purchase price would be considered as finance charge subject to any applicable installment sales legislation. This could be disastrous.

Members should have no trouble with this theory. First, state installment sales legislation will typically exclude from the definition of "consumer credit sale" a lease which can be terminated at any time by the lessee. For example, §1.301(12) of the Uniform Consumer Credit Code (in effect in a number of midwestern states) requires that there be a "sale" involving a "debt" payable in installments or with a finance charge. When there is no "debt" for the aggregate rental payments, there is no "consumer credit sale" within the meaning of such legislation. In fact, §1.301(14) of the U3C expressly distinguishes a "consumer lease" from a "consumer credit sale", defining a "consumer lease" as a "lease" of consumer goods for a term exceeding four months. This definition is parallel to that found in the Federal Consumer Leasing Act, discussed above. Therefore, the Fed staff opinions would be persuasive here also. Thus, the terminable transaction is neither a "consumer credit sale" subject to the rate limits of the U3C, nor a "consumer lease" subject to other requirements of that statute. Because of the right to cancel, the transaction is simply not covered by the typical installment sales or lease legislation at the state level. Second, the classic definition of usury involves, as a key element, an obligation to repay a debt in full. See 45 Am. Jr. 2d, Interest and Usury, at §117. It

covers loans of money but not loans of tangible personal property. Also see 45 Am. Jr. 2d, Interest and Usury, at §121; Title Guaranty & S. Co. v. Klein, 178 F. 689 (3d Cir. 1909). Thus, the convenience leases should escape the usury challenge even though they include a "rent to own" option. Third, all of the recent judicial decisions which find usury in an installment sale setting involve situations where the lessee was obligated to pay the full cash price plus a hidden finance charge. See, e.g., Bell v. Itek Leasing Corp., 555 SW2d 1 (Ark. 1977); McGalliard v. Liberty Leasing Co., 534 P.2d 528 (Alaska 1975); National Equip. Rental, Ltd. v. Hendrix, 565 F.2d 255 (2d Cir. 1977). In fact, most of these cases come up when the lessor sues the lessee for unpaid rents. In short, the option to terminate at the end of any weekly or monthly rental period should insulate the industry from attack based upon a usury theory. Nonetheless, counsel for leasing companies in various states should beware of special state statutes which may broaden the definition of a "consumer sale" to include terminable leases and thus raise usury questions. See the discussion concerning default and repossession in the next section.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended July 31, 1987
Commission File No. 0-12738

RENT-A CENTER, INC.
(Exact name of registrant as specified in its charter)

Delaware	48-0959188
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
9920 East Harry, Wichita, Kansas	67202
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number,
including area code: (316) 689-4100

Securities registered pursuant to Section 12(b)
of the Act: None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock	Convertible Subordinated
Par Value $1 per share	Debentures due 2012

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12

months (or such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
Yes _X_ No _____

Aggregate market value of the voting stock of Registrant held by nonaffiliates of the Registrant as of October 13, 1987: $0.

Indicate the number of shares outstanding at each of the issuer's classes of Common Stock, as of the latest practicable date. Common Stock, $1 par value per share, 1,000 shares, as of October 13, 1987.

DOCUMENTS INCORPORATED BY REFERENCE

Listed below is each document incorporated by reference in this report and the Part of this Form 10-K into which it is incorporated:

None

Regulation

The Company's rental transactions are regulated by state law in Alabama, Arkansas, Georgia, Indiana, Iowa, Massachusetts, Michigan, New York, South Carolina, Tennessee, and Texas. These laws distinguish "rental-purchase" agreements from consumer credit sales and generally require that certain disclosures be made to customers relating to price and ownership options prior to execution of the rental agreement. These laws, all of which have become effective within the past four years, provide a degree of clarity and stability in the regulatory environment and the Company supports efforts to promote the enactment of similar laws in other states.

Two states (North Carolina and Pennsylvania) have amended their credit sales laws expressly to include terminable rental agreements as credit sales when they contain a nominal purchase price option, so as to impose mandatory disclosure of credit terms and limitations on rates that may be charged. Although the Company takes the position such laws should not apply to its rental agreements because it believes its purchase option prices are more than "nominal", it has amended the rental agreements used in Pennsylvania to include credit sales disclosures.

In the absence of other governing statutes, some courts have held that rental agreements with purchase options should be governed by consumer credit sales laws and the Uniform Commercial Code ("UCC"). State consumer credit sales laws generally require written disclosure to customers of interest rates and finance charges and limit the rate or amount of such charges. UCC provisions include prescribed default procedures and a prohibition against unconscionable agreements. A rental agreement or lease generally is

considered a credit sale, subject to consumer credit sales laws and the UCC, if the renter contracts to pay rent in an amount equal to or in excess of the purchase price of the rented property and has an option to purchase the property at the end of the rental term for nominal or no additional consideration. The Company believes that such laws do not apply to its business because its rental agreements are terminable at any time by its customers without further obligation and because the purchase option price stated in its agreements should be deemed more than "nominal".

If adopted by legislation or applied by judicial interpretation to rental transactions under the System, credit sales laws regulating rates and charges in such transactions could have an adverse effect on the operations and profitability of a Franchisee under the System, which effect might be material, depending on the particular law involved. Calculation of the compliance under the System with such statutes vary from state to state, but may include a forfeiture of all amounts found to be interest or finance charges, and in some instances, forfeiture of the right to collect any payments of principal or interest. In addition, separate penalties may be imposed under many consumer credit sales laws for failing to give required disclosure of credit terms, even if the rates charged are lawful.

The Company supports the adoption of a federal law regulating rental-purchase agreements. A bill has been introduced in the 1987 session of U.S. Congress which would recognize rental-purchase agreements as a separate category of consumer transaction; would impose certain regulations on rental purchase advertising; and would require disclosure to customers of information relating to price and ownership option. The Company already voluntarily provides written disclosure of such information to its customers. The Company

believes the adoption of a federal law governing rental-purchase agreements would encourage fair and uniform regulation nationwide, and decrease the likelihood of inconsistent judicial interpretation of the laws governing such agreements.

The Company's business is further affected by various other state laws, including those affecting collection and repossession practices.

CONSUMER CREDIT PROTECTION ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON CONSUMER AFFAIRS
OF THE
COMMITTEE ON
BANKING, HOUSING, AND URBAN
AFFAIRS
UNITED STATES SENATE
NINETY-EIGHTH CONGRESS
FIRST SESSION
ON
S. 1152

TO AMEND THE CONSUMER CREDIT PROTECTION ACT WITH RESPECT TO CONSUMER LEASES AND RENTAL-PURCHASE AGREEMENTS

JULY 19, 1983

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Testimony of

J. Samuel Choate, Jr., Esq.

My name is J. Samuel Choate, Jr. and I am a partner in the Georgia law firm of Surrett, Choate and Walker. I am pleased to have the opportunity to appear before the Subcommittee on behalf of the Association of Progressive Rental Organizations, which represents companies that rent televisions and other home appliances under short-term leases with ownership options. (These leases are referred to as rental/purchase agreements in S. 1152.) Accompanying me is Bill Ogle, who owns and operates some 20 rental outlets in Florida.

Because short-term leases are not regulated under federal law, a confusing and inefficient patchwork of state legislation and judicial decisions has begun to emerge. We believe that federal legislation regulating such short-term leases is necessary in order to obtain guidelines that provide for adequate, reasonable and, most importantly to the rental industry, uniform disclosures.

My testimony today will focus first on a description of the industry and the services it provides, and then on the status of short-term leases under federal and state law. Finally, I will discuss the industry's reasons for supporting passage, with minor modifications, of S. 1152.

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Relation to State Law

One of the principal objectives of federal legislation should be to clarify the present confused status under state law of short-term leases with ownership options. Section 131 of S. 1152 would do little to affect that situation because only inconsistent state laws would be preempted by the federal legislation, with inconsistency being defined more narrowly

than in any previous similar federal law. The essence of the problem is efforts by state legislatures or courts to characterize the short-term consumer lease as something it is not, by labeling it a purchase or a credit sale.

The result for the industry is that, under state law, disclosure and other requirements (usury limits, for example) that have been designed to apply to credit sales would become applicable to short-term leases. Most rental dealers would find it both impracticable and uneconomical to comply with such state regulatory requirements. Particularly for dealers located in large metropolitan areas that span state lines, the additional costs and labor needed to prepare the multiple documents and advertising materials necessary to ensure compliance with both federal law and the provisions of differing state laws would be substantial. As a result, many rental dealers would be likely to drop the ownership option from their rental contracts, as has occurred in Pennsylvania, and consumers would lose the opportunity to obtain ownership, at little or no cost, of products they have rented for a period of time and would like to keep.

Federal preemption, by imposing a uniform set of disclosure requirements for the types of leases used by the rental industry, would make it feasible for dealers to continue offering this option.

Congress previously has preempted the ability of the states to characterize transactions as credit sales. Under Section 171(c) of the Truth-in-Lending Act (15 U.S.C. § 1666(j)), state law may not treat the difference between the price charged a cash-paying customer (who often is given a discount for using cash instead of credit), and the price charged a customer paying by credit, as part of the interest rate charged to the credit customer. For example, if a cash customer is able to negotiate a $95.00 price for a $100.00 product, and the retailer sells the product for $100.00 to a credit customer, the states cannot require that the $5.00

difference be quantified as a monthly multiple of an interest rate (e.g., the $5.00 discount multiplied by the 12 months in a year equals $60.00, resulting in an annual percentage rate of 60%). If states were not preempted in this area, merchants would most likely not be able to offer discounts to those paying cash since in many cases they then would be considered to be exceeding state usury limits for credit transactions.

Just as the discount provided a cash-paying customer is not considered a finance charge, the rental payments made under a short-term lease should not be characterized as a credit sale because the consumer is paying for the use and maintenance of an appliance, not purchasing it outright. Because the consumer has only a limited obligation under a short-term lease, it is illogical to characterize the differential between the required lease payments and the cost of the appliance to the dealer (or a comparable retail selling price) as a finance charge. Furthermore, it would be highly misleading to use the typically short lease term as the constant time period by which to multiply such a differential to calculate an annual percentage rate. For these reasons, we suggest that a Subsection (e) be added to § 131, Relation to State Laws, in S. 1152, which follows the format of 15 U.S.C. § 1666(j) and which would read as follows:

> Notwithstanding any other provisions of this title, any transaction pursuant to a consumer lease or other agreement within the definition of a "consumer lease" or "rental purchase agreement", as set forth in §§ 103(a)(5) and (9) of this act, shall not be considered a credit sale or other transaction for credit under the usury laws of any state or under the laws of any state relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element of charges permissible under such laws in connection with the extension or use of credit.

August 12, 1983

The Honorable Paula Hawkins
Chairman
Subcommittee on Consumer Affairs
of the Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Hawkins:

The Association of Progressive Rental Organizations (APRO) appreciates the opportunity to respond to the additional questions you have posed relating to APRO's testimony on S. 1152, which was submitted at the hearing held by the Subcommittee on Consumer Affairs on July 19, 1983.

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Usury Limits - Many states have enacted usury laws limiting the amount of the "finance charge" paid by a consumer, in terms of an annual percentage rate, for the credit obtained to finance the purchase of a product. Lease transactions, if characterized as "credit sales", would become subject to such usury limits. In order to apply usury laws to a lease transaction, for which there is no amount financed or finance charge, it has been suggested that a "finance charge equivalent" be computed by calculating the differential between the "fair market value (FMV) of the product" at the time the initial lease term begins (i.e., the amount financed) and the "aggregate cost to the consumer." For example, the average consumer makes 12 to 16 payments during a lease, but the "finance charge equivalent" would be calculated as if he or she were to make 78 payments. This calculation would

result in a finance charge commonly in excess of state usury limits.

Use of this formula to calculate a "finance charge equivalent" for a lease transaction, however, would produce dramatically different and inequitable results compared to the calculation of a "finance charge" for a credit sale. The rental dealer's costs of providing the short-term leasing service, which are incorporated into a consumer's rental payments, would be considered part of the "finance charge equivalent" under this calculation and thus would be subject to limitation, whereas the retail merchant's costs relating to selling his product are not required to be included in the "finance charge" for a credit sale. Furthermore, this formula assumes that each customer renews his lease for the potential, but not required, maximum number of payments before ownership transfers, which is the number of payments used to calculate the finance charge equivalent. In fact, because most consumers renew their leases for only three to four months and thus do not make the potential maximum payments necessary for ownership, use of the potential maximum payments would result in calculation of an inaccurate finance charge equivalent.

The purpose of the usury law is to control the price of credit to consumers, not to limit the price of a product or service. Thus, usury laws do not attempt to control the price a retail merchant may charge for purchase of a product. However, because of the anomalies that arise in attempting to calculate a finance charge equivalent for lease transactions, the application of usury limits to a lease transaction would have the distorted effect of controlling or limiting the price of the service, i.e., the lease payment. Since the rental dealer would thus be prevented from pricing the weekly or monthly rental payment based on the costs the dealer incurs in doing business, the dealer would be put out of business.

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Sincerely,

s/s

Sheldon L. Schreiberg

Enclosures

cc: Robert C. Zimmer, Esq.
J. Samuel Choate, Jr., Esq.
Edward L. Winn, III, Esq.

bcc: George C. Evans
Charles D. Sims
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October 26, 1984

Mr. Ken Wagnon
Capital Systems
300 N. Main
Wichita, Kansas 67202

Dear Ken:

I have enclosed a copy of an opinion letter received from Minnesota counsel. The letter came with a rather large stack of enclosures of statutes and cases for my review.

The basic conclusion is that the Rent-A-Center agreement is not a credit sale contract under Minnesota law and can be used without modification. However, I also asked whether there are precautions that can be taken to comply with laws that would apply if the agreement were to be recharacterized as a credit sale by a court's interpretation. If possibe, it is to your advantage to be able to argue that you comply with any laws that might be applied. Because of the extremely low legal interest rate applicable to such agreement in Minnesota (8%), it probably would not be possible to convince a court that the agreement was lawful if it should ever be construed as a credit sale contract. Therefore, I think it is doubtful that any changes in the agreement would be worthwhile.

You will note that they recommend submitting the agreement for an opinion by the attorney general as to compliance with the Minnesota Plain Language Contract Act. I intend to authorize them to do so and do not anticipate any problem in obtaining approval.

I will also review the materials they enclosed and report any additional recommendations within a couple of weeks.

Very truly yours,

s/s

James D. Oliver

OF FOULSTON, SIEFKIN, POWERS & EBERHARDT

JDO/an
Enc.